

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

FILED

APR - 3 2007

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY B DEPUTY

JAMES LETERSKI,

Plaintiff,

vs.

KINGFISHER COUNTY JAIL et al.,

Defendants.

No. CIV-06-451-W

ORDER

On March 6, 2007, United States Magistrate Judge Doyle W. Argo issued a Report and Recommendation in this matter and recommended that the Motion to Dismiss filed and supplemented by defendants Kingfisher County Jail and Eldon Dickson be granted in part and denied in part. The parties were advised of their right to object, and the matter now comes before the Court on the objection filed by plaintiff James Leterski.

Upon de novo review of the record, the Court concurs with Magistrate Judge Argo's suggested disposition of this lawsuit. Dismissal on the grounds of exhaustion is not warranted at this stage of the litigation.¹ Dismissal of defendant Kingfisher County Jail is however required since it is not a legal entity capable of being sued. E.g., Willson v. Oklahoma County Detention Center, No. CIV-00-491-R (W.D. Okla. April 20, 2000).

Accordingly, the Court

- (1) ADOPTS the Report and Recommendation issued on March 6, 2007;
- (2) DENIES the defendants' Motion to Dismiss filed on December 11, 2006, and

¹As Magistrate Judge Argo noted, denial of the defendants' Motion to Dismiss is without prejudice to the defendants' right to raise exhaustion as an affirmative defense in a subsequent dispositive motion.

supplemented on February 13, 2007, to the extent the defendants have sought dismissal of this matter at this stage due to Leterski's failure to exhaust available administrative remedies;

(3) GRANTS the defendants' Motion to Dismiss to the extent defendant Kingfisher County Jail has sought dismissal because it is not a suable entity and DISMISSES this defendant from this action; and

(4) RE-REFERS this matter to Magistrate Judge Argo for further proceedings.

ENTERED this 3^d day of April, 2007.



LEE R. WEST
UNITED STATES DISTRICT JUDGE